

EXCERPT OF STATEMENT OF
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BEFORE THE
PERMANENT SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE FREEDOM OF INFORMATION ACT

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REMOVING THESE OPERATIONAL FILES FROM THE FOIA SEARCH AND REVIEW PROCESS WOULD SUBSTANTIALLY LESSEN THE EVER-PRESENT RISK THAT A HUMAN ERROR MIGHT RESULT IN THE EXPOSURE OF INTELLIGENCE SOURCES AND METHODS. MOST IMPORTANTLY, I BELIEVE THAT THIS LEGISLATION WOULD GO FAR TOWARDS ALLEVIATING THE PERCEPTION OF OUR SOURCES AND POTENTIAL SOURCES THAT THE UNITED STATES GOVERNMENT CANNOT BE TRUSTED TO PROTECT THEM FROM EXPOSURE. AT THE SAME TIME, MR. CHAIRMAN, THE PUBLIC SHOULD RECEIVE IMPROVED SERVICE FROM THE AGENCY UNDER THE FOIA BECAUSE REQUESTERS WOULD NO LONGER HAVE TO WAIT TWO TO THREE YEARS TO RECEIVE WHATEVER RESPONSIVE INFORMATION THAT COULD BE RELEASED TO THEM. FURTHERMORE, IT IS IMPORTANT FOR EVERYONE TO UNDERSTAND THAT ENACTMENT OF THIS LEGISLATION WOULD NOT RESULT IN ANY MEANINGFUL LOSS OF INFORMATION NOW RELEASED UNDER THE ACT.

UNDER PRESENT LAW ANY FOIA REQUESTER CAN CAUSE A SEARCH AND REVIEW TO BE MADE IN ALL CIA FILES, INCLUDING OPERATIONAL FILES, AND THE AGENCY MUST DEFEND A DENIAL OF SENSITIVE INFORMATION TO ANYONE WHO ASKS FOR IT LINE BY LINE, SOMETIMES WORD BY WORD. WE, OF COURSE, ATTEMPT TO ASSURE OUR SOURCES, WHO LIVE IN FEAR OF THIS PROCESS, THAT THE EXEMPTIONS AVAILABLE UNDER THE FOIA ARE SUFFICIENT TO PROTECT THEIR IDENTITIES, BUT THAT ASSURANCE IS TOO OFTEN SEEN AS HOLLOW. THEY ASK, WITH JUSTIFICATION IN MY VIEW, THAT IN EXCHANGE FOR THE RISKS WHICH THEY UNDERTAKE ON OUR BEHALF, WE PROVIDE THEM WITH AN ABSOLUTE ASSURANCE OF CONFIDENTIALITY. SO LONG AS WE ARE COMPELLED BY

LAW TO TREAT OUR OPERATIONAL FILES AS POTENTIALLY PUBLIC DOCUMENTS, WE ARE UNABLE TO PROVIDE THE IRON-CLAD GUARANTEE WHICH IS THE BACKBONE OF AN EFFECTIVE INTELLIGENCE SERVICE. IN ADDITION, THE REVIEW OF OPERATIONAL FILES WITHDRAWS UNIQUELY CAPABLE PERSONNEL FROM INTELLIGENCE OPERATIONS, AND COMPELS US TO VIOLATE OUR WORKING PRINCIPLES OF GOOD SECURITY. LET ME EXPLAIN THESE POINTS IN MORE DETAIL.

FOR SECURITY REASONS, AGENCY INFORMATION IS COMPARTMENTED INTO NUMEROUS SELF-CONTAINED FILE SYSTEMS WHICH ARE DESIGNED IN ORDER TO SERVE THE OPERATIONAL NEEDS OF A PARTICULAR COMPONENT OR TO ACCOMPLISH A PARTICULAR FUNCTION. AGENCY PERSONNEL ARE GIVEN ACCESS TO SPECIFIC FILES ONLY ON A "NEED TO KNOW" BASIS. OPERATIONAL FILES ARE MORE STRINGENTLY COMPARTMENTED BECAUSE THEY DIRECTLY REVEAL INTELLIGENCE SOURCES AND METHODS. YET A TYPICAL REQUEST UNDER THE FOIA WILL SEEK INFORMATION ON A GENERALLY DESCRIBED SUBJECT WHEREVER IT MAY BE FOUND IN THE AGENCY AND WILL TRIGGER A SEARCH WHICH TRANSGRESSES ALL PRINCIPLES OF COMPARTMENTATION. A RELATIVELY SIMPLE FOIA REQUEST MAY REQUIRE AS MANY AS 21 AGENCY RECORDS SYSTEMS TO BE SEARCHED, A DIFFICULT REQUEST CAN INVOLVE OVER 100.

IN MANY INSTANCES THE RESULTS OF THESE SEARCHES ARE PRODIGIOUS. THOUSANDS OF PAGES OF RECORDS ARE AMASSED FOR REVIEW. ALTHOUGH, IN THE CASE OF RECORDS GLEANED FROM OPERATIONAL FILES, VIRTUALLY NONE OF THIS INFORMATION IS RELEASED TO THE REQUESTER, SECURITY RISKS, WHICH ARE INHERENT

IN THE REVIEW PROCESS, REMAIN PRESENT. THE DOCUMENTS ARE SCRUTINIZED LINE BY LINE, WORD BY WORD, BY HIGHLY SKILLED OPERATIONAL PERSONNEL WHO HAVE THE NECESSARY TRAINING AND EXPERIENCE TO IDENTIFY SOURCE-REVEALING AND OTHER SENSITIVE INFORMATION. THESE REVIEWING OFFICERS MUST PROCEED UPON THE ASSUMPTION THAT ALL INFORMATION RELEASED WILL FALL INTO THE HANDS OF HOSTILE POWERS, AND THAT EACH BIT OF INFORMATION WILL BE RETAINED AND PIECED TOGETHER BY OUR ADVERSARIES IN A PAINSTAKING EFFORT TO EXPOSE SECRETS WHICH THE AGENCY IS DEDICATED TO PROTECT. AT THE SAME TIME, HOWEVER, THE REVIEWING OFFICER MUST BE PREPARED TO DEFEND EACH DETERMINATION THAT AN ITEM OF INFORMATION IS CLASSIFIED OR OTHERWISE PROTECTED UNDER THE FOIA. FURTHERMORE, THE OFFICER MUST BEAR IN MIND THAT UNDER THE FOIA EACH "REASONABLY SEGREGABLE" ITEM OF UNPROTECTED INFORMATION MUST BE RELEASED. SENTENCES ARE CARVED INTO THEIR INTELLIGIBLE ELEMENTS, AND EACH ELEMENT IS SEPARATELY STUDIED. WHEN THIS PROCESS IS COMPLETED FOR OPERATIONAL RECORDS, THE RESULT IS USUALLY A COMPOSITE OF BLACK MARKINGS, INTERSPREAD WITH A FEW DISCONNECTED PHRASES WHICH HAVE BEEN APPROVED FOR RELEASE.

AFTER THE RESPONSIVE RECORDS HAVE BEEN PROPERLY REVIEWED, THE PUBLIC DERIVES LITTLE OR NOTHING BY WAY OF MEANINGFUL INFORMATION FROM THE FRAGMENTARY ITEMS OR OCCASIONAL ISOLATED PARAGRAPH WHICH IS ULTIMATELY RELEASED FROM OPERATIONAL FILES. YET WE NEVER CEASE TO WORRY ABOUT THESE FRAGMENTS. WE CAN

NEVER BE COMPLETELY CERTAIN WHAT OTHER PIECES OF THE JIGSAW PUZZLE OUR ADVERSARIES ALREADY HAVE, OR WHAT ELSE THEY NEED TO COMPLETE THE PICTURE. PERHAPS WE MISSED THE SOURCE-REVEALING SIGNIFICANCE OF SOME ITEM. PERHAPS WE MISPLACED ONE OF THE BLACK MARKINGS. THE REVIEWING OFFICER IS CONFRONTED WITH A DIZZYING TASK OF DEFENDING EACH DELETION WITHOUT RELEASING ANY CLUE TO THE IDENTITY OF OUR SOURCES. HE HAS NO MARGIN FOR ERROR. THOSE WHO HAVE TRUSTED US MAY LOSE THEIR REPUTATION, THEIR LIVELIHOOD, OR THEIR LIVES; THE WELL-BEING OF THEIR FAMILIES IS AT STAKE IF ONE APPARENTLY INNOCUOUS ITEM FALLS INTO HOSTILE HANDS AND TURNS OUT TO BE A CRUCIAL LEAD. AS LONG AS THE PROCESS OF FOIA SEARCH AND REVIEW OF CIA OPERATIONAL FILES CONTINUES, THIS POSSIBILITY OF ERROR CANNOT BE ERADICATED. THE HARM DONE TO THE AGENCY'S MISSION BY SUCH ERRORS IS, OF COURSE, UNKNOWN AND UNCALCULABLE. THE POTENTIAL HARM IS, IN OUR JUDGMENT, EXTREME.

ASIDE FROM THIS FACTOR OF HUMAN ERROR, WE RECOGNIZE THAT UNDER THE CURRENT FREEDOM OF INFORMATION ACT, SUBJECT TO JUDICIAL REVIEW, NATIONAL SECURITY EXEMPTIONS DO EXIST TO PROTECT THE MOST VITAL INTELLIGENCE INFORMATION. THE KEY POINT, HOWEVER, IS THAT THOSE SOURCES UPON WHOM WE DEPEND FOR THAT INFORMATION HAVE AN ENTIRELY DIFFERENT PERCEPTION.

I WILL EXPLAIN HOW THAT PERCEPTION HAS BECOME, FOR US, A REALITY WHICH HURTS THE WORK OF THE AGENCY ON A DAILY BASIS. THE GATHERING OF INFORMATION FROM HUMAN SOURCES REMAINS A

CENTRAL PART OF CIA'S MISSION. IN PERFORMANCE OF THIS MISSION, AGENCY OFFICERS MUST, IN ESSENCE, ESTABLISH A SECRET CONTRACTUAL RELATIONSHIP WITH PEOPLE IN KEY POSITIONS WITH ACCESS TO INFORMATION THAT MIGHT OTHERWISE BE INACCESSIBLE TO THE UNITED STATES GOVERNMENT.

THIS IS NOT AN EASY TASK, NOR IS IT QUICKLY ACCOMPLISHED. THE PRINCIPAL INGREDIENT IN THESE RELATIONSHIPS IS TRUST. TO BUILD SUCH A RELATIONSHIP, WHICH IN MANY CASES ENTAILS AN INDIVIDUAL PUTTING HIS LIFE AND THE SAFETY OF HIS FAMILY IN JEOPARDY TO FURNISH INFORMATION TO THE U.S. GOVERNMENT, IS A DELICATE AND TIME-CONSUMING TASK. OFTEN, IT TAKES YEARS TO CONVINCE AN INDIVIDUAL THAT WE CAN PROTECT HIM. EVEN THEN, THE SLIGHTEST PROBLEM, PARTICULARLY A BREACH OR PERCEIVED BREACH OF TRUST, CAN PERMANENTLY DISRUPT THE RELATIONSHIP. A PUBLIC EXPOSURE OF ONE COMPROMISED AGENT WILL OBVIOUSLY DISCOURAGE OTHERS.

ONE MUST RECOGNIZE ALSO THAT MOST OF THOSE WHO PROVIDE US WITH OUR MOST VALUABLE AND, THEREFORE, MOST SENSITIVE INFORMATION LIVE IN TOTALITARIAN COUNTRIES. IN SUCH PLACES INDIVIDUALS SUSPECTED OF ANYTHING LESS THAN TOTAL ALLEGIANCE TO THE RULING PARTY OR CLIQUE CAN LOSE THEIR LIVES. IN SOCIETIES SUCH AS THESE, THE CONCEPTS BEHIND THE FREEDOM OF INFORMATION ACT ARE TOTALLY ALIEN, FRIGHTENING, AND INDEED CONTRARY TO ALL THAT THEY KNOW. IT IS VIRTUALLY IMPOSSIBLE FOR MOST OF OUR AGENTS AND SOURCES IN SUCH SOCIETIES TO UNDERSTAND THE LAW

ITSELF, MUCH LESS WHY THE CIA OPERATIONAL FILES, IN WHICH THEIR IDENTITIES ARE REVEALED, SHOULD BE SUBJECT TO THE ACT. IT IS DIFFICULT, THEREFORE, TO CONVINCE ONE WHO IS SECRETLY COOPERATING WITH US THAT SOME DAY HE WILL NOT AWAKEN TO FIND IN A U.S. NEWSPAPER OR MAGAZINE AN ARTICLE THAT IDENTIFIES HIM AS A CIA SPY.

ALSO, IMAGINE THE SHACKLES BEING PLACED ON THE CIA OFFICER TRYING TO CONVINCE THE FOREIGN SOURCE TO COOPERATE WITH THE UNITED STATES. THE SOURCE, WHO MAY BE LEANING TOWARDS COOPERATION, WILL DEMAND THAT HE BE PROTECTED. HE WANTS ABSOLUTE ASSURANCE THAT NOTHING WILL BE GIVEN OUT WHICH COULD CONCEIVABLY LEAD HIS OWN INCREASINGLY SOPHISTICATED COUNTER-INTELLIGENCE SERVICE TO APPEAR AT HIS DOORSTEP. OF COURSE, ACCESS TO OPERATIONAL FILES UNDER FOIA IS NOT THE ONLY CAUSE OF THIS FEAR. LEAKS, THE DELIBERATE EXPOSURE OF OUR PEOPLE BY AGEE AND HIS COHORTS PRIOR TO YOUR PASSAGE OF THE IDENTITIES LEGISLATION, AND ESPIONAGE ACTIVITIES BY FOREIGN POWERS ALL CONTRIBUTE, BUT THE PERCEIVED HARM DONE BY THE FOIA IS PARTICULARLY HARD FOR OUR CASE OFFICERS TO EXPLAIN BECAUSE IT IS SEEN AS A DELIBERATE ACT OF THE UNITED STATES GOVERNMENT.

ALTHOUGH WE TRY TO GIVE ASSURANCES TO THESE PEOPLE, WE HAVE ON RECORD NUMEROUS CASES WHERE OUR ASSURANCES HAVE NOT SUFFICED. FOREIGN AGENTS, SOME VERY IMPORTANT, HAVE EITHER REFUSED TO ACCEPT OR HAVE TERMINATED A RELATIONSHIP ON THE GROUNDS THAT, IN THEIR MINDS -- AND IT IS UNIMPORTANT WHETHER

THEY ARE RIGHT OR NOT -- BUT, IN THEIR MINDS THE CIA IS NO LONGER ABLE TO ABSOLUTELY GUARANTEE THAT THEY CAN BE PROTECTED. HOW MANY CASES OF REFUSAL TO COOPERATE WHERE NO REASONS ARE GIVEN ARE BASED ON SUCH CONSIDERATIONS, I CANNOT SAY. I SUBMIT, HOWEVER, THAT KNOWING OF NUMEROUS SUCH CASES, THERE ARE MANY MORE INSTANCES WHERE SOURCES WHO HAVE DISCONTINUED RELATIONSHIPS OR REDUCED THEIR INFORMATION FLOW HAVE DONE SO BECAUSE OF THEIR FEAR OF DISCLOSURE. NO ONE CAN QUANTIFY HOW MUCH INFORMATION VITAL TO THE NATIONAL SECURITY OF THE UNITED STATES HAS BEEN OR WILL BE LOST AS A RESULT.

THE FOIA ALSO HAS HAD A NEGATIVE EFFECT ON OUR RELATIONSHIPS WITH FOREIGN INTELLIGENCE SERVICES. OUR STATIONS OVERSEAS CONTINUE TO REPORT CONSTERNATION OVER WHAT IS SEEN AS A POTENTIAL LEGAL REQUIREMENT TO DISCLOSE INFORMATION ENTRUSTED TO US. AGAIN, THE UNANSWERABLE QUESTION IS HOW MANY OTHER SERVICES ARE NOW MORE CAREFUL AS TO WHAT INFORMATION THEY PASS TO THE UNITED STATES.

THIS LEGISLATION WILL GO A LONG WAY TOWARD RELIEVING THE PROBLEMS THAT I HAVE OUTLINED. THE EXCLUSION FROM THE FOIA PROCESS OF OPERATIONAL FILES WILL SEND A CLEAR SIGNAL TO OUR SOURCES AND TO THOSE WE HOPE TO RECRUIT THAT THE INFORMATION WHICH PUTS THEM AT RISK WILL NO LONGER BE SUBJECT TO THE PROCESS. THEY WILL KNOW THAT THEIR IDENTITIES ARE NOT LIKELY TO BE EXPOSED AS A RESULT OF A CLERICAL ERROR AND THEY WILL KNOW THAT THE SAME INFORMATION WILL BE HANDLED IN A SECURE AND

COMPARTMENTED MANNER AND NOT BE LOOKED AT BY PEOPLE WHO HAVE NO NEED TO KNOW THAT INFORMATION. IN HIS DECISION IN A LAWSUIT BROUGHT BY PHILLIP AGEE AGAINST THE CIA, FBI, NSA, DEPARTMENT OF STATE, AND DEPARTMENT OF JUSTICE, JUDGE GERHARD GESELL OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA SUMMARIZED THE PROBLEM THIS WAY: "IT IS AMAZING THAT A RATIONAL SOCIETY TOLERATES THE EXPENSE, THE WASTE OF RESOURCES, THE POTENTIAL INJURY TO ITS OWN SECURITY WHICH THIS PROCESS NECESSARILY ENTAILS."

AT THE SAME TIME, AS I HAVE EXPLAINED BEFORE, BY REMOVING THESE SENSITIVE OPERATIONAL FILES FROM THE FOIA PROCESS, THE PUBLIC IS DEPRIVED OF NO MEANINGFUL INFORMATION WHATSOEVER.

THE PALTRY RESULTS FROM FOIA REVIEW OF OPERATIONAL FILES ARE INEVITABLE. THESE RECORDS DISCUSS AND DESCRIBE THE NUTS AND BOLTS OF SENSITIVE INTELLIGENCE OPERATIONS. CONSEQUENTLY, THEY ARE PROPERLY CLASSIFIED AND ARE NOT RELEASABLE UNDER THE FOIA. THE REVIEWING OFFICERS WHO PRODUCE THESE MASTERPIECES OF BLACK MARKINGS ARE DOING THEIR JOB AND DOING IT PROPERLY. THE SIMPLE FACT IS THAT INFORMATION IN OPERATIONAL RECORDS IS BY AND LARGE EXEMPT FROM RELEASE UNDER THE FOIA, AND THE FEW BITS AND PIECES WHICH ARE RELEASABLE HAVE LITTLE OR NO INFORMATIONAL VALUE.

WHEN I SPEAK OF REVIEWING OFFICERS ABSORBED IN THIS PROCESS, IT IS IMPORTANT TO STRESS THAT THESE INDIVIDUALS ARE NOT AND CANNOT BE SIMPLY CLERICAL STAFF OR EVEN "FOIA

PROFESSIONALS." IN ORDER TO DO THEIR JOB, THEY MUST BE CAPABLE OF MAKING DIFFICULT AND VITALLY IMPORTANT OPERATIONAL JUDGMENTS, AND, CONSEQUENTLY, MOST OF THEM MUST COME FROM THE HEART OF THE AGENCY'S INTELLIGENCE CADRE. MOREOVER, BEFORE ANY ITEM OF INFORMATION IS RELEASED UNDER THE FOIA, THE RELEASE MUST BE CHECKED WITH A DESK OFFICER WITH CURRENT KNOWLEDGE OF THE OPERATIONAL ACTIVITY INVOLVED. HENCE, WE MUST NOT ONLY CALL INTELLIGENCE OFFICERS ON A FULL-TIME BASIS AWAY FROM THEIR PRIMARY DUTIES, WE MUST ALSO CONTINUALLY DIVERT THE ATTENTION OF THE OFFICERS OF OUR OPERATING COMPONENTS. THAT IS SO BECAUSE WE HAVE A PRACTICE IN THE OPERATIONS DIRECTORATE WHICH REQUIRES THAT EVERY PIECE OF PAPER WHICH IS RELEASED, EVEN INCLUDING THOSE COVERED WITH BLACK MARKS MUST BE REVIEWED BY AN OFFICER FROM THE PARTICULAR DESK THAT WROTE THE DOCUMENTS OR RECEIVED IT FROM THE FIELD, AND WE CANNOT ALTER THIS PRACTICE BECAUSE THE RISK OF COMPROMISE IS SO GREAT. YOU CAN IMAGINE THE DISRUPTION, FOR EXAMPLE, ON THE SOVIET DESK WHEN THE PEOPLE THERE MUST TAKE TIME OFF FROM THE WORK THEY ARE SUPPOSED TO DO TO REVIEW A DOCUMENT PREPARED FOR RELEASE UNDER THE FOIA. AND IT IS OBVIOUS, OF COURSE, THAT WHEN A CIA OPERATION MAKES THE FRONT PAGES OF THE NEWSPAPERS, THE FOIA REQUESTS ON THAT SUBJECT ESCALATE. THIS LOSS OF MANPOWER CANNOT BE CURED BY AN AUGMENTATION OF FUNDING. WE CANNOT HIRE INDIVIDUALS TO REPLACE THOSE LOST, WE MUST TRAIN THEM. AFTER THE REQUISITE YEARS OF TRAINING, THEY ARE A SCARCE RESOURCE NEEDED IN THE PERFORMANCE OF THE AGENCY'S OPERATIONAL MISSION.